THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 12889 of 2005

Dated 8-8-2005

Between:

M/s. Mukunda Dairy Products Pvt, Ltd.,
R/o. Flat.No.101, 1st Floor, G.K. Clasic
Srinagar colony Rep.by its Executive Director MR. S.C.H. Kondaiah.

..... PETITIONER

AND

1 The Commercial Tax Officer
Narasaraopet Guntur District and another

.....RESPONDENT(S)

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 12889 of 2005

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ORDER: (per Sri BRSR,J)

The petitioner is a private limited company carrying on business in purchase and sale of milk and milk products. It was provisionally assessed for the assessment year 2003-04 under the provisions of the A.P. General Sales Tax Act, 1957 (for short 'the Act') by the 1st respondent vide order dated 20.8.2004 levying tax on the disputed turn over of Rs.5,92,52,237/- for the said assessment year 2003-04. The assessing authority rejected the claim of the petitioner that the entire turn over is exempted from the tax in view of G.O.Ms.No.1091 dated 10.6.1957 and accordingly levied the tax on the disputed turn over, which inter alia includes the sale turn over of cream and SNF (solid not containing fat).

The petitioner preferred an appeal under Section 19 of the Act before the 2nd respondent challenging the order of the assessment dated 20.8.2004. That at the time of filing of the appeal, the petitioner, as is required under the second proviso to sub-section (1) of Section 19 of the Act, has deposited an amount of Rs.7,01,282/-, being 12.5% of the disputed tax for maintaining the appeal.

The appellate authority having considered the appeal on merits allowed the same and accordingly held that the cream produced and marketed by the petitioner through the process called 'churning' is eligible for exemption as claimed by it. The order of the assessing authority was accordingly set aside.

The petitioner thereafter filed repeated representations including the representation dated 2.2.2005 requesting the Commercial Tax Officer to refund the amount of Rs.7,01,282/- deposited by them at the time of filing of the appeal. The request, obviously, has been made in terms of the third proviso to Section 21(2) of the Act. It is also brought to our notice that the petitioner made a representation to the Commercial Tax Officer requesting atleast to adjust the amount refundable towards the Value Added Tax to which also there has been no response. It is under those circumstances, the petitioner invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India has filed this writ petition on 16.6.2005 with a prayer to declare the action of the 1st respondent in not refunding the amount of Rs.7,01,282/- is illegal, arbitrary and without any authority of law and contrary to the last proviso to Section 21(2) of the Act. The petitioner accordingly prays for issuance of consequential directions directing the respondents to refund the amount of Rs.7,01,282/- together with interest at 18%.

This Court vide its order dated 17.6.2005 required the respondents to file counter within two weeks. The matter came up for consideration on 1.7.2005 and was again adjourned at the request of the learned standing counsel for the department and again was taken up on 8.7.2005 on which date the Court made an observation that it is eminently a fit case where the department is required to refund the amount. Nothing happened thereafter. The matter came up for consideration before us on 3.8.2005 on which date we have also expressed our opinion that it is a fit case where the department should refund the amounts and preferably by handing over either demand draft or cheque for the said amount in the Court itself to the learned counsel for the petitioner. Even today, the said amounts are not refunded.

However, in the counter affidavit filed by the Deputy Commercial Tax Officer, Narasaraopet, it is inter alia averred that the Additional Commissioner (CT)(Legal) issued show cause notice dated 16.7.2005 proposing to set aside the appellate orders of the 2nd respondent herein. This show cause notice was served on the petitioner on 19.7.2005. It is not difficult to visualize that the law was set in motion against the petitioner herein after the matter underwent three adjournments at the request of the department. The conduct of the department speaks for itself. We are constrained to observe that the department has made an attempt to over reach the orders that were likely to be passed in this writ petition. Neither the plea nor the conduct of the department is appreciated.

Be that as it may. There is no provision under the Act which enables the authorities to withhold refund of the amount merely because a show cause notice is issued proposing to revise the appellate order. We fail to appreciate as to how the department could sit over the matter and refuse to refund the amount to the petitioner to which it is lawfully entitled to in law. We are not able to appreciate the averments made in the counter affidavit, which are in the nature of grounds attacking the order passed by the appellate authority. There is no answer forthcoming from the department as to how they could refuse to refund the amounts to the petitioner as is required under Section 21(2) of the Act. The high handed and arbitrary action of the respondents is required to be deprecated and we accordingly do so.

For the aforesaid reasons, this writ petition is allowed as prayed for. There shall be a direction to the respondents to forthwith refund the amount of Rs.7,01,282/- deposited by the petitioner for the assessment year 2003-04 at the time of preferring

the appeal before the 2nd respondent within a period of one week from the date of receipt of a copy of this order. The petitioner is entitled to payment of interest at the rate of 18% on the said amount. The order shall be complied with and it is made clear that under no circumstances, will further extension be granted to the department for refunding the amounts.

The petitioner is entitled to costs quantified at Rs.5,000/-.

(B.SUDERSHAN REDDY,J)

dated 08.08.2005

(RAMESH RANGANATHAN,J)

msv.